

105TH CONGRESS
1ST SESSION

S. 612

To amend section 355 of the Internal Revenue Code of 1986 to prevent the avoidance of corporate tax on prearranged sales of corporate stock, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 17, 1997

Mr. ROTH (for himself and Mr. MOYNIHAN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend section 355 of the Internal Revenue Code of 1986 to prevent the avoidance of corporate tax on prearranged sales of corporate stock, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. APPLICATION OF SECTION 355 TO DISTRIBUTI-**
4 **ONS FOLLOWED BY ACQUISITIONS AND TO**
5 **INTRAGROUP TRANSACTIONS.**

6 (a) DISTRIBUTIONS FOLLOWED BY ACQUISITIONS.—
7 Section 355 of the Internal Revenue Code of 1986 (relat-
8 ing to distribution of stock and securities of a controlled

1 corporation) is amended by adding at the end the following
2 new subsection:

3 “(e) RECOGNITION OF GAIN WHERE CERTAIN DIS-
4 TRIBUTIONS OF STOCK OR SECURITIES ARE FOLLOWED
5 BY ACQUISITION.—

6 “(1) GENERAL RULE.—If there is a distribution
7 to which this subsection applies, the following rules
8 shall apply:

9 “(A) ACQUISITION OF CONTROLLED COR-
10 PORATION.—If there is an acquisition described
11 in paragraph (2)(A)(ii) with respect to any con-
12 trolled corporation (or any successor thereof),
13 any stock or securities in the controlled cor-
14 poration shall not be treated as qualified prop-
15 erty for purposes of subsection (c)(2) of this
16 section or section 361(c)(2).

17 “(B) ACQUISITION OF DISTRIBUTING COR-
18 PORATION.—If there is an acquisition described
19 in paragraph (2)(A)(ii) with respect to the dis-
20 tributing corporation (or any successor thereof),
21 the controlled corporation shall recognize gain
22 in an amount equal to the amount of net gain
23 which would be recognized if all the assets of
24 the distributing corporation (immediately after
25 the distribution) were sold (at such time) for

1 fair market value. Any gain recognized under
2 the preceding sentence shall be treated as long-
3 term capital gain and shall be taken into ac-
4 count for the taxable year which includes the
5 day after the date of such distribution.

6 “(2) DISTRIBUTIONS TO WHICH SUBSECTION
7 APPLIES.—

8 “(A) IN GENERAL.—This subsection shall
9 apply to any distribution—

10 “(i) to which this section (or so much
11 of section 356 as relates to this section)
12 applies, and

13 “(ii) which is part of a plan (or series
14 of related transactions) pursuant to which
15 a person acquires stock representing a 50-
16 percent or greater interest in the distribut-
17 ing corporation or any controlled corpora-
18 tion (or any successor of either).

19 “(B) PLAN PRESUMED TO EXIST IN CER-
20 TAIN CASES.—If a person acquires stock rep-
21 resenting a 50-percent or greater interest in the
22 distributing corporation or any controlled cor-
23 poration (or any successor of either) during the
24 4-year period beginning on the date which is 2
25 years before the date of the distribution, such

1 acquisition shall be treated as pursuant to a
2 plan described in subparagraph (A)(ii) unless it
3 is established that the distribution and the ac-
4 quisition are not pursuant to a plan or series of
5 related transactions.

6 “(C) CERTAIN ACQUISITIONS NOT TAKEN
7 INTO ACCOUNT.—If—

8 “(i) a person acquires stock in any
9 controlled corporation by reason of holding
10 stock in the distributing corporation, and

11 “(ii) such person did not acquire the
12 stock in the distributing corporation pursu-
13 ant to a plan described in subparagraph
14 (A)(ii),

15 the acquisition described in clause (i) shall not
16 be taken into account for purposes of subpara-
17 graph (A)(ii) or (B).

18 “(D) COORDINATION WITH SUBSECTION
19 (d).—This subsection shall not apply to any
20 distribution to which subsection (d) applies.

21 “(3) DEFINITION AND SPECIAL RULES.—For
22 purposes of this subsection—

23 “(A) 50-PERCENT OR GREATER INTER-
24 EST.—The term ‘50-percent or greater interest’

1 has the meaning given such term by subsection
2 (d)(4).

3 “(B) DISTRIBUTIONS IN TITLE 11 OR SIMI-
4 LAR CASE.—Paragraph (1) shall not apply to
5 any distribution made in a title 11 or similar
6 case (as defined in section 368(a)(3)).

7 “(C) AGGREGATION AND CONTRIBUTION
8 RULES.—

9 “(i) AGGREGATION.—The rules of
10 paragraph (7) of subsection (d) shall
11 apply.

12 “(ii) CONTRIBUTION.—Section
13 318(a)(2) shall apply in determining
14 whether a person holds stock or securities
15 in any corporation. Except as provided in
16 regulations, section 318(a)(2)(C) shall be
17 applied without regard to the phrase ‘50
18 percent or more in value’ for purposes of
19 the preceding sentence.

20 “(D) STATUTE OF LIMITATIONS.—If there
21 is an acquisition to which paragraph (1) (A) or
22 (B) applies—

23 “(i) the statutory period for the as-
24 sessment of any deficiency attributable to
25 any part of the gain recognized under this

1 subsection by reason of such acquisition
2 shall not expire before the expiration of 3
3 years from the date the Secretary is noti-
4 fied by the taxpayer (in such manner as
5 the Secretary may by regulations pre-
6 scribe) that such acquisition occurred, and
7 “(ii) such deficiency may be assessed
8 before the expiration of such 3-year period
9 notwithstanding the provisions of any
10 other law or rule of law which would other-
11 wise prevent such assessment.

12 “(4) REGULATIONS.—The Secretary shall pre-
13 scribe such regulations as may be necessary to carry
14 out the purposes of this subsection, including regula-
15 tions—

16 “(A) providing for the application of this
17 subsection where there is more than 1 con-
18 trolled corporation,

19 “(B) treating 2 or more distributions as 1
20 distribution where necessary to prevent the
21 avoidance of such purposes, and

22 “(C) providing for the application of rules
23 similar to the rules of subsection (d)(6) where
24 appropriate for purposes of paragraph (2)(B).”

1 (b) SECTION 355 NOT TO APPLY TO CERTAIN
2 INTRAGROUP TRANSACTIONS.—Section 355 of the Inter-
3 nal Revenue Code of 1986, as amended by subsection (a),
4 is amended by adding at the end the following new sub-
5 section:

6 “(f) SECTION NOT TO APPLY TO CERTAIN
7 INTRAGROUP TRANSACTIONS.—Except as provided in reg-
8 ulations, this section shall not apply to the distribution
9 of stock from 1 member of an affiliated group filing a con-
10 solidated return to another member of such group, and
11 the Secretary shall provide proper adjustments for the
12 treatment of such distribution, including (if necessary) ad-
13 justments to—

14 “(1) the adjusted basis of any stock which—

15 “(A) is in a corporation which is a member
16 of such group, and

17 “(B) is held by another member of such
18 group, and

19 “(2) the earnings and profits of any member of
20 such group.”

21 (c) EFFECTIVE DATE.—

22 (1) IN GENERAL.—The amendments made by
23 this section shall apply to distributions after April
24 16, 1997.

1 (2) TRANSITION RULE FOR DISTRIBUTIONS
2 FOLLOWED BY ACQUISITIONS.—The amendments
3 made by subsection (a) shall not apply to any dis-
4 tribution after April 16, 1997, if such distribution
5 is—

6 (A) made pursuant to a written agreement
7 which was (subject to customary conditions)
8 binding on such date and at all times there-
9 after,

10 (B) described in a ruling request submitted
11 to the Internal Revenue Service on or before
12 such date, or

13 (C) described on or before such date in a
14 public announcement or in a filing with the Se-
15 curities and Exchange Commission required
16 solely by reason of the distribution.

17 This paragraph shall not apply to any written agree-
18 ment, ruling request, or public announcement or fil-
19 ing unless it identifies the acquirer of the distribut-
20 ing corporation or any controlled corporation, which-
21 ever is applicable.

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